

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re:

Chapter 11

**VALLEY MEDIA, INC.,
Debtor**

Case No. 01-11353(PJW)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE,
Creditor/Appellant**

V.

VALLEY MEDIA, INC.
Debtor/Appellee

DESIGNATION OF THE ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL
AND STATEMENT OF THE ISSUES TO BE PRESENTED

The Commonwealth of Massachusetts Department of Revenue (“MDOR”), a creditor in the bankruptcy case of Valley Media, Inc. pending as Case No. 01-11353 (PJW) in the United States Bankruptcy Court for the District of Delaware under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, and appellant to the United States District Court for the District of Delaware under 28 U.S.C §158(a) from the judgment, order or decree of the Honorable Peter J. Walsh, United States Bankruptcy Judge, captioned “Final Order Granting Debtor’s Fifth Omnibus Objection (Substantive) To Claims (Re: D.I.1287),” entered in this case as Docket No. 2113 on January 13, 2005, in the contested matter commenced by the Debtor’s Fifth Omnibus Objection (Substantive) To Claims, Docket No. 1287, hereby designates the following items to be included in the record on appeal and provides the statement of issues to be presented on appeal, pursuant to Fed.R.Bankr.P. Rule 8006.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**Volume I: Pleadings****Volume II: Stipulation of Facts With All Exhibits**

<u>Description of Item</u>	<u>Dated</u>	<u>Docket No.</u>	<u>Volume I Record Tab</u>
MDOR's Proof of claim 563 (as amended)	4/7/03		1
Debtor's Fifth Omnibus (Substantive) Objection to Claim	3/14/03	1287	2
MDOR's Opposition to Debtor's Fifth Omnibus Objection to Claims	5/16/03	1373	3
Certification re filing of MDOR's response and scheduling matter for 7/22/03	5/22/03	1379	4
Agenda of matters scheduled for 7/22/03	7/18/03	1433	5
Notice and Substitution of Appearance, Attorney Certification, and Request for Service of Papers	7/16/03	1434	6
Agenda of matters scheduled for 9/4/03	9/2/03	1484	7
Agenda of matters scheduled for 10/15/03	10/13/03	1521	8
Agenda of matters scheduled for 12/4/03	12/20/03	1590	9
Stipulation Of Facts With All Exhibits	12/2/03	1592	See Record Vol. II
Valley Media's Brief For Debtor	12/08/03	1600	10
MDOR's Memorandum Of Law In Support Of Claim	12/11/03	1603	11
Valley Media's Reply Brief For Debtor	2/9/04	1668	12
MDOR's Memorandum Of Law In Reply	2/13/03	1680	13
Notice of Completion of Briefing	2/16/04	1683	14
Bankruptcy Court's Memorandum Opinion	1/29/05	2091	15
Bankruptcy Court's Order Granting Fifth Omnibus Objection To Claims	1/13/05	2113	16

Motion By MDOR To Extend Time For Filing Notice Of Appeal	1/21/05	2126	17
Order Enlarging Time For Filing Notice Of Appeal	2/1/05	2148	18
Notice of Appeal	2/9/05	2160	19

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in interpreting the Massachusetts sales tax statute, Mass. G.L. c. 64H §1 *et seq.*, in a manner that relieves Valley Media, Inc., from any sales tax liability on its drop shipment transactions.
2. Whether the Bankruptcy Court erred in interpreting the Massachusetts use tax statute, Mass. G.L. c. 64I §1 *et seq.*, in a manner that relieves Valley Media, Inc., from any use tax liability on its drop shipment transactions.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE, Appellant

THOMAS F. REILLY, ATTORNEY GENERAL
KEVIN W. BROWN, SPECIAL ASSISTANT
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Date: February 9, 2005

CERTIFICATE OF SERVICE

I, Jeffrey S. Ogilvie, certify that on February 22, 2005, I served the following pleading:

**DESIGNATION OF THE ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL
AND STATEMENT OF THE ISSUES TO BE PRESENTED**

by notice of electronic filing and by mailing a copy thereof to the following parties via first class mail postage prepaid:

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Jeffrey S. Ogilvie /S/

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